The Nation

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Column: BusinessINSIGHT: FATCA: WILL THAILAND ENTER INTERGOVERNMENTAL AGREEMENT WITH US?

BusinessINSIGHT

FATCA: WILL THAILAND ENTER INTERGOVERNMENTAL AGREEMENT WITH US?

ON JANUARY 17, the US Treasury issued the long-awaited final regulations implementing the Foreign Account Tax Compliance Act. Fatca requires non-US financial institutions (FIs) to report information on their US account holders to the US government or face a 30-per-cent withholding tax on income from US sources.

The regulations – 544 pages with some areas still left to further guidance – did take into account many of the comments from the global financial community to eliminate unnecessary burdens and permit the leveraging of existing practices to make Fatca implementation a more manageable process. Notwithstanding the attempt to make the rules more palatable, most of the fundamental obligations set forth in the proposed rules were adopted in the final version.

Implementing a Fatca compliance programme will still be an enormous challenge for Thai FIs. The cost to build a Fatca compliance system can be many millions of US dollars for a large, complex FI with diversified product offerings – life insurance, asset and wealth management, brokerage – and operations in multiple countries.

One option to mitigate some of the burden for FIs is an intergovernmental agreement. An IGA is an agreement on Fatca compliance and reporting between a foreign government and the United States. But an IGA is not a panacea and still places significant costs and burdens on FIs and the foreign government.

It has been reported that the Thai Bankers Association and the Federation of Thai Capital Market Organisations have called for the Thai government to enter an IGA.

One would hope that the Thai government addresses the possibility of an IGA with eyes wide open. One possible issue with such an agreement is that it would require every Thai FI, large or small, to comply with Fatca.

While many large Thai FIs absent an IGA will in essence be required to comply with Fatca because of their extensive contacts with the US financial system, many mid-size and small Thai institutions have little or no interaction with the US and would otherwise choose not to comply with the act.

With little or no US source income they would not suffer any withholding until at least 2017 when something called pass-through withholding may come about. An IGA would impose significant compliance costs and burdens on FIs that would otherwise have chosen not to comply.

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Entering an IGA would also result in significant costs to the Revenue Department, as it would need to build and maintain systems and devote manpower to meet its obligations under the agreement.

There are two IGA models – Model 1 Reciprocal and Model 2 Non-Reciprocal. Model 1 would alleviate Thai FIs from reporting information directly to the US Treasury. They would report instead to the Thai Revenue Department, which would accumulate all the information from every institution and report it to the US. One can imagine the information-technology system the department would need to build to accomplish this!

Model 1 was designed to accomplish two things – to deal with situations where local privacy laws prohib-

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it FIs from sharing customer information with a third party like the US government and to have the US reciprocate and share information on the country's citizens' US-sourced income with the foreign tax authority.

In the case of Thailand, the second objective is somewhat moot as Thailand only taxes offshore investment income of its citizens if the income is remitted to Thailand in the year earned. By simply leaving the income offshore until the following year, Thai citizens can avoid Thai tax. The issue of privacy laws could be dealt with by Thailand passing legislation permitting Thai FIs to share customer information with the US under Fatca.

Under Model 2, local FIs would still report directly to the US Treasury and not to the Thai Revenue Department, and there would be no sharing of information from the US on Thai investments in the US. So how is Model 2 different from normal Fatca reporting?

What it does is lessen some of the due diligence, withholding and other requirements on FIs under the normal Fatca regime. It also reduces the burdens on the local tax authority that are present under Model 1, but still imposes requirements on the local tax authority that do not exist in the normal Fatca regime. In the normal Fatca regime the local tax authority is not a participant and is in essence a bystander, and all compliance burdens are on the FIs that choose to participate.

The United States has said it is in active negotiations with more than 50 countries on IGAs, but only four have been signed.

While a Model 1 or 2 IGA would reduce the compliance tasks for financial institutions, it would shift some of the load and responsibility and attendant costs to the local tax authority. An IGA would also necessitate some level of local legislation to be enacted to implement it.

Now that the final regulations have been issued, Thai FIs will need to begin in earnest to address Fatca. But they will need to know sooner rather than later whether Thailand will enter an IGA and if so which model, as their systems, processes and controls to implement a Fatca compliance programme will be substantially different with or without an IGA. Small institutions that thought they could ignore Fatca will also be required to comply if there is an IGA.

One would hope that the government would quickly make known its intentions, and that whatever they are, it does so with eyes wide open and a full understanding of the commitments involved.

Additional information on Fatca, the final regulations and IGAs can be found at pwc.com/us/fatca.